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ALEXANDER L. STEVAS,
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CASE NO. 82-636

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

J. L. LESTER & SON, INC.,
Petitioner,

v.

CAROLYN TEESE SMITH, ADMINISTRATRIX OF THE ESTATE OF H. W. SMITH, DECEASED,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO COURT OF APPEALS OF GEORGIA AND SUPREME COURT OF GEORGIA

BRIEF FOR RESPONDENT

VICTOR A. CAVANAUGH, ESQ.
SWIFT, CURRIE, McGHEE & HIERS
771 Spring Street, N.W.
P. O. Box 54247
Atlanta, Georgia 30379-2401

INDEX

	Page
STATEMENT OF CASE	1
SUMMARY OF ARGUMENT	1
ARGUMENT	2
CONCLUSION	2

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STATEMENT OF CASE

Although Respondent is in substantial disagreement with Petitioner's recitation of the facts of this case, she reserves the right to respecify such facts should this Court grant a writ of certiorari. For reasons hereinafter set forth, however, the writ should not be granted.

SUMMARY OF ARGUMENT

Petitioner has not set forth sufficient grounds upon which this Court should act in issuing a writ of certiorari to the Georgia Supreme Court and Court of Appeals inasmuch as Petitioner in the Georgia trial and appellate

courts failed to present in a proper and timely fashion those issues under the U. S. Constitution that it is now urging before this Court in seeking a review by writ of certiorari.

ARGUMENT

A quick review of the record in this case will reflect that Petitioner received an extensive and lengthy review of its case by the Georgia trial court, Court of Appeals and Supreme Court. During the course of the presentation of the issues to the trial court, Petitioner failed to raise any federal questions. Furthermore, Petitioner failed to raise federal questions in its Enumerations of Error before the Georgia Supreme Court, in the first instance, nor did it subsequently do so in its Enumerations of Error before the Georgia Court of Appeals. Passing reference was made to the federal questions, as conceded by Petitioner on pages 15 and 16 of its Petition, only in the Motion for Rehearing before the Georgia Supreme Court and in the Petition for Certiorari to the Georgia Supreme Court from the most recent Court of Appeals decision. Respondent would respectfully suggest that in both instances, the federal questions were alleged at the last minute inasmuch as Petitioner had failed on the merits and was grasping at straws in its final appeal before the Georgia appellate courts.

CONCLUSION

Petitioner has not raised before the Georgia trial or appellate courts in any meaningful way the federal questions which it now asks this Court to determine. Respondent would show that a review of this matter on writ of certiorari should not be entertained since, among other things, it does not meet the criteria set forth in Rule 17

inasmuch as the Georgia courts were never given the opportunity by Petitioner in any meaningful way to consider the federal constitutional questions herein raised. Specifically, with regard to Rule 17(b), the Georgia appellate courts did not decide ". . . a federal question in a way in conflict with the decision of another state court of last resort or of a federal court of appeals" nor, with respect to Rule 17(c), did the Georgia appellate courts decide ". . . an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way in conflict with applicable decisions of this Court".

In summary, Petitioner never timely or meaningfully raised any of the federal questions before the Georgia courts about which it now complains.

Respectfully submitted,

VICTOR A. CAVANAUGH
Attorney for Respondent

OF COUNSEL:

SWIFT, CURRIE, MCGHEE & HIERS
771 Spring Street, N.W.
Atlanta, Georgia 30379

(404) 881-0844